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09/898,150

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Dietmar Uhde

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EXAMINER

ORTIZ CRIADO, JORGE L

ART UNIT	PAPER NUMBER
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2627

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01/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/898,150	Applicant(s) UHDE ET AL.	
	Examiner Jorge L. Ortiz-Criado	Art Unit 2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-25, 27, 31-35, 37 and 38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-25, 27, 31-35, 37 and 38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-24, 27, 31-35 and 37-38 are rejected under 35 U.S.C. 102(b) as being unpatentable over Bakx U.S. Patent No. 5,072,435 in view of Okazaki et al. U.S. Patent No. 5,831,947 and further in view of Shim U.S. Patent No. 6,608,804.

Regarding claim 22, Bakx discloses a method for reducing an initialization time of an apparatus for reading from an optical recording medium, said optical recording medium having identification information data which enables the identification of the optical recording medium individually among at least optical recording media of the same type (See Abstract; col. 1, line 35 to col. 2, line 57), comprising the steps of:

detecting, from an optical recording medium inserted into said apparatus, the identification information data of the optical recording medium to identify the optical recording medium (See col. 5, lines 31-43; Figs. 2,10);

determining if adjustment parameters values selected from control for reading from the identified optical recording medium are accessibly stored for said apparatus (See col. 5, lines 31-43; Figs. 2,10; i.e. intensity, field strength, pulse width, speed);

in response to identifying that the adjustment parameter values are accessibly stored for said apparatus, setting control and regulating circuits of said apparatus in accordance with stored adjustment values (see col. 5, lines 45-48; Figs. 2,10) and

in response to determining that adjustment parameter values for said apparatus are not accessibly stored, initializing said apparatus to determine respective adjustment parameter values selected for the control and regulating circuits of said apparatus such that said apparatus is able to optimally read from and write to the identified optical recording medium, and respectively storing said determined adjustment parameter values for said apparatus and the corresponding identification data of said identified optical recording medium (see col. 5, lines 48-61; Figs. 2,10).

Bakx discloses that the adjustment parameters are only few examples of the large number of adjustment parameters, which are possible that are associated to adjustment for reading from the identified optical recording medium. Bakx discloses the claimed invention except for the specific adjustment parameter value and as provided in the alternative language "selected from" focus gain, focus offset, track gain, track offset, and HF gain.

However, this feature is well known in the art and is evidenced by Okazaki et al., which discloses a method for reducing an initialization time of an apparatus for reading from and writing an optical recording medium, having identification information data which enables the identification of the optical recording medium individually among at least optical recording

media of the same type, obtaining the identification information data of an optical recording medium inserted into said apparatus to identify said optical recording medium (See Fig. 4, #100; col. 8, lines 14-16);

determining if adjustment parameter values selected from focus gain, focus offset, track gain, track offset, and HF gain for reading from and writing to the identified optical recording medium are accessibly stored for said apparatus (See Fig. 4, #101; col. 7, line 64 to col. 8, line 4; col. 8, lines 16-19);

in response to identifying that adjustment parameter values for said apparatus, setting tracking or focus control and regulating circuits of said apparatus in accordance with stored adjustment values (See Fig. 4, #105-107; col. 8, lines 25-43) and

in response to determining that adjustment parameter values for said apparatus are not accessibly stored, initializing said apparatus to determine respective adjustment parameter values selected from focus gain, focus offset, track gain, track offset, and HF gain for the tracking or focus control and regulating circuits of said apparatus such that said apparatus is able to optimally read from and write to the identified optical recording medium (See Fig. 4, #102-103; col. 8, lines 34-42), and respectively storing said determined adjustment values for said apparatus and the corresponding identification data of said identified optical recording medium (See Fig. 4, #104; col. 8, lines 34-42).

It would have been obvious to one of an ordinary skill in the art at the time of the invention was made to include adjustment parameter values selected from focus gain, focus offset, track gain, track offset, and HF gain in order to control and regulates the read and/write operations optimally with high accuracy, controlling parameters that are corrected to

accommodate various variations or irregularities in the apparatus for the apparatus for reading from and/or writing an optical recording medium and reducing considerably the time required for automatic regulation of circuits of said apparatus, as taught by Okazaki et al.

Bakx in combination with Okazaki et al. further discloses wherein the apparatus comprises an optical read unit, as Bakx discloses where the location for recording the identification data depends on the type of the recording media used. But Bakx does not expressly disclose wherein a Burst Cutting Area “BCA” data present on the optical recording media is used as the identification data of the optical recording media, as recited in the claim “wherein a content of a BCA data area on the recording medium is used as the identification data; wherein detecting the identification data comprises coarsely focusing an objective lens of the apparatus and displacing an optical scanner of the apparatus into a position which is predetermined for the BCA data area; and wherein the identification data is detected without track regulation.

However, the features of a “BCA” data area used to obtain identification information or other types of information is well known standard in the art and is normally provided for identification and/or authorization of discs and is evidenced by Shim.

Shim discloses a method for quickly producing read or write readiness of an apparatus for reading from or writing to an optical recording medium, the recording medium having identification information items which individually identify the recording medium individually among recording media of the same type (i.e. same types: “Optical Media”, among the same type DVD, CD, CD-ROM, DVD-ROM etc.), which includes of a Burst Cutting Area “BCA” comprising an identification information data to rapidly and accurately performs discrimination

of the different discs, by displacing the optical read unit into a position predetermined for the BCA data (BCA area on innermost area of the disk; col. 4, lines1-3; Fig. 4, #402),

coarsely focusing the optical read unit onto the optical recording medium is an inherent characteristics of using a BCA area, at very least some coarse focusing has to be performed, for reading the BCA region, the mere fact that the optical unit has to be positioned on the BCA to read it, implies that at very least a coarse focus has to be performed;

and wherein the identification data is detected without track regulation, this is also an inherent characteristic of using and reading a BCA area of a disk, where servo tracking is not performed, due to the structure of the BCA. Because, a BCA area has a width wider than a track pitch, it applies to two or more tracks. For this reason, track servo is turned OFF when the BCA is reproduced.

It would have been obvious to one with ordinary skill in the art to include the identification information as in "BCA" data identification in order to quickly and accurately performing the identification as suggested by Shim, and further since the BCA signal level is larger in amplitude and longer in cycle as compared with the pit signal of the program area of the recording medium, the BCA signal is easily distinguished at the time of reproducing by a simple circuit, furthermore the BCA would also aids in piracy protection as well know in the art.

Using a BCA for identification is also admitted by the Applicant, which clearly acknowledged that BCA is known and well used with DVD-Rom media.

These features are prior art admitted by the applicant, which recite that "the invention can generally be applied to optical recording media which can be distinguished using individually stored features or identification information items. This is true, in particular, of DVD-ROM

media, since the latter often have a "BCA code" ("Burst Cutting Area") which is individually allocated for each medium or each recording medium. After the uniform production of a series of discs, the "Burst Cutting Area" is applied by a burning operation into a specific area of the individual disc. This BCA data area is normally provided for identification and authorization of the disc. Since this BCA data area uniquely identifies a disc, this BCA data area can be used for individual recognition of the corresponding disc" (page 3, line 28 to page 4, line 4 of the specification).

Assuming *arguendo* that the above is not applicant's admission of prior art, the features are taught by the Shim reference as used above.

Regarding claims 23 and 33, Bakx further discloses wherein the adjustment parameter values for said apparatus are stored in a storage means for storing said determined adjustment values for said apparatus (see col. 5, lines 48-61; Fig. 1, ref# 12); Okazaki et al also discloses the feature (see col.15, lines 18-26).

Regarding claims 24 and 34, Bakx further discloses wherein said storage means comprises a "non-volatile" memory (see col. 5, lines 48-61; Fig. 1, ref# 12); Okazaki et al also discloses the feature (see col.15, lines 18-26).

Regarding claim 27, Bakx further discloses wherein the identification data of the optical recording media comprises first data identifying said optical recording medium as one of a plurality of recording types and second data specific to only the respective optical recording medium. (See col. 2, lines 1-21; col. 5, line 31-61; Fig. 2,10).

Regarding claim 31, apparatus claim 31 is drawn to the apparatus that performs the corresponding method claimed in claim 22. Therefore apparatus claims 31 correspond to method claim 22 and are rejected for the same reasons of obviousness as used above.

Regarding claim 32, Bakx further discloses wherein said detection means comprise a read and a read means (See col. 3, lines 21-22 Fig. 1, ref#3).

Regarding claim 35, Bakx further discloses wherein said storage means comprises at least one of a non-volatile memory of the apparatus and a non-volatile data carrier provided externally to the apparatus (see Fig. 1, ref# 12); Okazaki et al also discloses the feature (see col.15, lines 18-26).

Regarding claim 37, Bakx further discloses wherein a method/apparatus for reducing an initialization time of an apparatus for reading from and/or writing an optical recording mediums having identification information data which enables the identification of the optical recording medium individually among at least optical recording media of the same type, as outlined above with claim 31. Bakx does not expressly disclose the use of DVD-ROM discs as optical recording

media. However, an optical recording media encompass DVD-ROM discs, because DVD-ROM discs are optical recording media having identification information data; Okazaki et al also discloses the feature (see col. 1, lines 9-14, which discloses phase change optical disk).

Regarding claim 38, claim 38 recites limitations similar to the claim 22 above and is rejected for the same reasons of obviousness as used above.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bakx U.S. Patent No. 5,072,435 in combination Okazaki et al. U.S. Patent No. 5,831,947 and Shim U.S. Patent No. 6,608,804 and further in view Scibora U.S. Patent No. 6,366,544.

Bakx in combination with Okazaki et al. and Shim discloses all the limitations based on claim 22, as outlined above. Bakx in combination with Okazaki et al. and Shim further shows wherein a storage means is accessible by the apparatus. But Bakx in combination with Okazaki et al. and Shim does not expressly disclose an external storage means.

However this feature is well known in the art as evidenced by Scibora, which discloses a storage means carrier provided externally to an apparatus, and in that the content of the file of said storage means is accessible by said apparatus (See col. 3, lines 9-11; col. 4, lines 21-29; Fig. 1).

Therefore it would have been obvious to one with ordinary skill in the art at the time of the invention to include a storage means provided externally to the apparatus and in that the content of the file of said storage means is accepted into a memory which is provided in the apparatus, because by providing the external storage means allows update by downloading to the

memory in the apparatus, with other content files which identifies the recording medium and enable reading the recording medium by the information content downloaded to the memory of the apparatus, as suggested by Scibora.

Response to Arguments

Applicant's arguments filed 12/01/2007 have been fully considered but they are not persuasive.

Applicants argues that Bakx reference absolutely does not teach, disclose or suggest, "determining if adjustments values associated with parameters values for reading from optical recording medium are accessibly stored for said apparatus".

And, where Bakx absolutely does not teach, disclose or suggest the Applicant's invention, that directly influence READING, such that teachings of Bakx teach away from the Applicant's claimed invention and that Bakx is silent about a process of reading and that does not contain any motivation to reduce initialization time.

The Examiner cannot concur with Applicant.

Bakx teaches wherein the identification data of the inserted optical recording medium is **read** by said apparatus before said apparatus reaches "a read readiness state/Optimum conditions" (see col. 5, lines 31-61; col. 6, lines 34-35; step A11, A12, A14 are performed in a **non-optimum conditions** /before read readiness state, time while the adjustments using the

parameters have NOT being made, NOT Optimally Adjusted hence no “fine” focusing are adjusted etc.).

Bakx discloses and teaches reading from and writing the identified optical recording medium which specifically discloses a READ/WRITE head # 3 as in Fig. 1, and where a write means (i.e. elements # 3, #8 in Fig. 1) are Optimally Adjusted depending on the Identification data Read, determining if adjustments values associated with parameters values for reading from and writing to the identified optical recording medium are accessibly stored for said apparatus, in that, as acknowledged by Applicant, Bakx teaches several adjustments parameters (i.e. intensity, field strength, pulse width, speed) and at Very Least the Adjustment parameter of light Intensity, Speed etc., directly influences the ability to READ, and it would be understood to one of ordinary skill in the art, that these parameters are associated with parameters values for reading, to see for example references made of record in 04/07/2004, 12/23/2004, Massakawa U.S. Patent No. 5,155,719, U.S. Patent No. Suzuki 4,989,195).

The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious.

Furthermore, prior art reference teaches away from claimed invention if it suggests that developments flowing from its disclosures are unlikely to produce objective of invention, and what reference teaches person of ordinary skill in art is not limited to what reference specifically “talks about” or what is specifically “mentioned” or “written” in reference. What a reference teaches a person of ordinary skill is not, as “Applicant’s expert” appears to believe, limited to what a reference specifically “talks about” or what is specifically “mentioned” or “written” in the

reference. *Syntex (U.S.A.) LLC v. Apotex Inc.*, 74 USPQ2d 1823 (CA FC 2005); *In re Gurley*, 27 F.3d 551, 553 [31 USPQ2d 1130] (Fed. Cir. 1994).

KSR forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. *Ex parte Smith*, USPQ2d, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007) (citing KSR, 82 USPQ2d at 1396).

Applicant argues that Bakx absolutely fails to teach or suggest parameters selected from focus gain, focus offset, track gain, track offset, and HF gain.

The examiner cannot concur because, the examiner is not relying on Bakx for this teachings. The rejection is based on combination of references and as clearly outlined in the above rejections Okazaki teaches adjustments parameters selected from focus gain, focus offset, track gain, track offset, and HF gain (See Fig. 4, #101; col. 7, line 64 to col. 8, line 4; col. 8, lines 16-19).

Applicant argues that Okazaki absolutely fails to bridge the substantial gap between the invention of the Applicant and the teachings of Bakx, because Okazaki does not disclose detecting from an optical recording medium inserted in the apparatus the identification data.

Applicant is reminded that the examiner is not relying on Okazaki to show this feature, because as clearly outlined in the rejections above, the rejection is based on combination of references, and as clearly pointed out in the above rejections Bakx teaches this feature.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jorge L. Ortiz-Criado whose telephone number is (571) 272-7624. The examiner can normally be reached on Mon.-Fri 10:00 am- 6:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Korzuch can be reached on (571) 272-7589. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Jorge L. Ortiz-Criado/
Patent Examiner AU2627